

FILED

Dale K. Galipo, Esq. (Bar No. 144074)
LAW OFFICES OF DALE K. GALIPO
21800 Burbank Boulevard, Suite 310
Woodland Hills, CA 91367
Telephone: (818) 347-3333
Facsimile: (818) 347-4118
E-Mail: dalekgalipo@yahoo.com

11 APR 12 AM 9:24

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY: _____

Brian E. Claypool (Bar No. 134674)
THE CLAYPOOL LAW FIRM
1055 East Colorado Boulevard, 5th Floor
Pasadena, CA 91106
Telephone: (626) 240-4616
Facsimile: (626) 796-9951
E-Mail: becesq@aol.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

R.S., a minor by and through his
Guardian Ad Litem STEPHANIE
SENTELL, and PAMELA AMICI,
Plaintiffs,

vs.

CITY OF LONG BEACH, and DOES 1-
10, inclusive,
Defendants.

SACV11-00536 AG(RNBx)
Case No. _____

COMPLAINT FOR DAMAGES

1. Unreasonable Search and Seizure—
Detention and Arrest (42 U.S.C. §
1983)
2. Unreasonable Search and Seizure
and Due Process—Excessive Force
and Denial of Medical Care (42
U.S.C. § 1983)
3. Substantive Due Process—(42
U.S.C. § 1983)
4. Municipal Liability for
Unconstitutional Custom, Practice,
or Policy (42 U.S.C. § 1983)
5. False Arrest/False Imprisonment
6. Battery
7. Negligence
8. Violation of Bane Act (Cal. Civil
Code § 51.7)

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

R.S., a minor by and through his Guardian Ad Litem Stephanie Sentell, and Pamela Amici, for their complaint against Defendants City of Long Beach and Does 1-10, inclusive, allege as follows:

INTRODUCTION

1. This civil rights action seeks compensatory and punitive damages from Defendants for violating various rights under the United States Constitution, Constitution of the State of California and California State Law in connection with the fatal police shooting of the decedent, Douglas Zerby.

PARTIES

2. At all relevant times, decedent Douglas Zerby (“DECEDENT”) was an individual residing in County of Los Angeles, California.

3. Plaintiff R.S. is a minor individual residing in County of Mendocino, California, and is the natural born son to DECEDENT. R.S. sues by and through his natural mother and Guardian Ad Litem, STEPHANIE SENTELL. R.S. sues both in his individual capacity as the son of DECEDENT and in a representative capacity as a successor-in-interest to DECEDENT. R.S. seeks both survival and wrongful death damages under federal and state law.

4. Plaintiff PAMELA AMICI is an individual residing in County of Orange, California, and is the natural mother of DECEDENT. PAMELA AMICI sues in her individual capacity as the mother of DECEDENT. PAMELA AMICI seeks wrongful death damages under federal law.

5. At all relevant times, Defendant CITY OF LONG BEACH ("CITY") is and was a duly organized public entity, form unknown, existing under the laws of the State of California. At all relevant times, CITY was the employer of Defendants DOES 1-5, who were CITY Police Officers, and DOES 6-10, who were managerial,

1 supervisorial, and policymaking employees of the CITY Police Department. DOES
2 1-10 are sued in their individual capacity for damages only.

3 6. At all relevant times, Defendants DOES 1-10 were duly authorized
4 employees and agents of CITY, who were acting under color of law within the course
5 and scope of their respective duties as CITY Police Officers and with the complete
6 authority and ratification of their principal, Defendant CITY.

7 7. At all relevant times, Defendants DOES 1-10 were duly appointed CITY
8 Police Officers and/or employees or agents of CITY, subject to oversight and
9 supervision by CITY's elected and non-elected officials.

10 8. In doing the acts and failing and omitting to act as hereinafter described,
11 Defendants DOES 1-10 were acting on the implied and actual permission and consent
12 of CITY.

13 9. At all times mentioned herein, each and every CITY defendant was the
14 agent of each and every other CITY defendant and had the legal duty to oversee and
15 supervise the hiring, conduct and employment of each and every CITY defendant.

16 10. The true names of defendants DOES 1 through 10, inclusive, are
17 unknown to Plaintiffs, who therefore sue these defendants by such fictitious names.
18 Plaintiffs will seek leave to amend this complaint to show the true names and
19 capacities of these defendants when they have been ascertained. Each of the
20 fictitious named defendants is responsible in some manner for the conduct and
21 liabilities alleged herein.

22 11. On January 27, 2011, Plaintiffs filed a comprehensive and timely claim
23 for damages with CITY pursuant to applicable sections of the California Government
24 Code.

25 12. On March 13, 2011, Plaintiffs' claims were rejected by operation of law.
26
27
28

1 **JURISDICTION AND VENUE**

2 13. This civil action is brought for the redress of alleged deprivations of
3 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and the
4 Fourth and Fourteenth Amendments of the United States Constitution. Jurisdiction is
5 founded on 28 U.S.C. §§ 1331, 1343, and 1367.

6 14. Venue is proper in this Court under 28 U.S.C. § 1391(b), because
7 Defendants reside in, and all incidents, events, and occurrences giving rise to this
8 action occurred in, the County of Los Angeles, California.

9
10 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

11 15. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
12 through 14 of this Complaint with the same force and effect as if fully set forth
13 herein.

14 16. On the afternoon of December 12, 2010, DECEDENT was sitting on the
15 landing to the porch of his friend's apartment, waiting for his friend to return home.

16 17. While sitting and waiting for his friend to return home, DECEDENT
17 apparently picked up a water nozzle handle that was lying on the porch.

18 18. A neighbor called 911 and reported that a person on the landing
19 appeared to be inebriated and possibly in possession of a weapon.

20 19. Within a few minutes, a Long Beach Police Officer (DOE 1) and a Long
21 Beach Marine Patrol Officer (DOE 2) arrived at the residence of the 911 caller and
22 ordered all occupants out of the home. Additional Long Beach Police Officers
23 (DOES 3-5) arrived on the scene shortly thereafter.

24 20. At no time prior to the shots being fired did either DOES 1 or 2, or any
25 other DOE Officer, ask the reporting party why he called or what he observed.

26 21. Within a short time after arriving on the scene, multiple shots were fired
27 by three officers (DOES 1-3). On information and belief, the first shots fired were
28

1 from the kitchen area of the home of the 911 caller, approximately 12-15 feet from
2 where DECEDENT was sitting.

3 22. DECEDENT was shot a total of twelve times, causing DECEDENT
4 serious physical injury, pain and suffering, and death. At all times prior to the
5 shooting, DECEDENT was unarmed.

6 23. At no time prior to firing shots at DECEDENT, did the CITY Police
7 Officers on the scene ever identify themselves as CITY Police Officers. The CITY
8 Police Officers on the scene did not speak with DECEDENT at all. Indeed,
9 DECEDENT would not have even known that CITY Police Officers were present
10 since no officer had spoken with him, and they had all taken positions of cover.

11 24. At no time prior to shooting, did DOES 1-3 ever order DECEDENT to
12 drop anything, nor did they warn DECEDENT that they were going to shoot him or
13 give him any commands. Rather, the officers shot the decedent without warning.

14 25. On information and belief, DECEDENT had not committed any crime.
15 Defendants DOES 1-3, had neither reasonable suspicion to detain DECEDENT, nor
16 probable cause to arrest him.

17 26. At the time of the shooting, DECEDENT was unarmed and posed no
18 imminent threat of death or serious physical injury to either DOES 1-3, nor or any
19 other person. The use of deadly force was excessive and objectively unreasonable
20 under the circumstances. The only object found on the staircase after the shooting
21 was a water nozzle handle. Given that DECEDENT was unarmed and given the
22 number of shots fired without warning, the use of deadly force in this case
23 demonstrated a deliberate indifference to the health and safety of Mr. Zerby and
24 shocks the conscience.

25 27. On information and belief, Defendants DOES 1-3 had no information
26 that DECEDENT had committed a felony.

27 28. Immediately after shooting DECEDENT, DOES 1-3 dragged his body
28 from the landing area of the porch to the bottom of the steps. Paramedics were not

1 permitted to treat DECEDENT for at least fifteen minutes, and potentially longer,
2 after the shooting.

3
4 **FIRST CLAIM FOR RELIEF**

5 **Unreasonable Search and Seizure—Detention and Arrest (42 U.S.C. § 1983)**

6 (Against Defendants DOES 1-5)

7 29. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
8 through 28 of this Complaint with the same force and effect as if fully set forth
9 herein.

10 30. Defendants DOES 1-5 caused DECEDENT to be detained and arrested
11 in violation of his right to be secure in his person against unreasonable searches and
12 seizures as guaranteed to the DECEDENT under the Fourth Amendment to the
13 United States Constitution and applied to state actors by the Fourteenth Amendment.

14 31. As a result of the conduct of Defendants, DOES 1-5 are liable for
15 DECEDENT's injuries, either because they were integral participants in the wrongful
16 detention and arrest, or because they failed to intervene to prevent these violations.

17 32. The DECEDENT was detained without reasonable suspicion and
18 arrested without probable cause.

19 33. The conduct of Defendants DOES 1-5 was willful, wanton, malicious,
20 and done with reckless disregard for the rights and safety of DECEDENT and
21 therefore warrants the imposition of exemplary and punitive damages as to
22 Defendants DOES 1-5.

23 34. R.S. brings this claim individually and as successor-in-interest to
24 DECEDENT, and seeks both survival and wrongful death damages under federal law
25 for the violation of DECEDENT's rights. Plaintiffs also seek attorney fees under this
26 claim.

SECOND CLAIM FOR RELIEF

**Unreasonable Search and Seizure and Due Process—Excessive Force and Denial
of Medical Care (42 U.S.C. § 1983)**

(Against Defendants DOES 1-5)

35. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 34 of this Complaint with the same force and effect as if fully set forth herein. Specifically, the use of deadly force was excessive and unreasonable under the circumstances.

36. Defendant DOES 1-5's unjustified shooting deprived DECEDENT of his right to be secure in his persons against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

37. The unreasonable use of deadly force by Defendant DOES 1-5 deprived the DECEDENT of his right to be secure in his person against unreasonable searches and seizures as guaranteed to DECEDENT under the Fourth Amendment to the United States Constitution and applied to state actors by the Fourteenth Amendment.

38. As a result, DECEDENT suffered extreme pain and suffering and eventually suffered a loss of life and of earning capacity. Plaintiffs have also been deprived of the life-long love, companionship, comfort, support, society, care, and sustenance of DECEDENT, and will continue to be so deprived for the remainder of their natural lives. Plaintiffs are also claiming funeral and burial expenses and a loss of financial support.

39. As a result of their conduct, Defendants DOES 1-5 are liable for DECEDENT's injuries, either because they were integral participants in the excessive force, or because they failed to intervene to prevent these violations.

40. Defendants DOES 1-5 knew that failure to provide timely medical treatment to DECEDENT could result in further significant injury or the unnecessary

1 and wanton infliction of pain, but disregarded that serious medical need, causing him
2 great bodily harm and death.

3 41. The conduct of Defendants DOES 1-5 was willful, wanton, malicious,
4 and done with reckless disregard for the rights and safety of DECEDENT and
5 therefore warrants the imposition of exemplary and punitive damages as to
6 Defendants DOES 1-5.

7 42. R.S. brings this claim individually and as successor- in-interest to the
8 DECEDENT, and seeks both survival and wrongful death damages under federal law
9 for the violation of DECEDENT's rights. Plaintiffs also seek attorney fees under this
10 claim.

11
12 **THIRD CLAIM FOR RELIEF**

13 **Substantive Due Process (42 U.S.C. § 1983)**

14 (Against Defendants DOES 1-5)

15 43. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
16 through 42 of this Complaint with the same force and effect as if fully set forth
17 herein.

18 44. R.S. had a cognizable interest under the Substantive Due Process Clause
19 of the Fourteenth Amendment of the United States Constitution to be free from state
20 actions that deprive him of life, liberty, or property in such a manner as to shock the
21 conscience, including but not limited to, unwarranted state interference in Plaintiffs'
22 familial relationship with his father, DECEDENT.

23 45. PAMELA AMICI had a cognizable interest under the Due Process
24 Clause of the Fourteenth Amendment of the United States Constitution to be free
25 from state actions that deprive her of life, liberty, or property in such a manner as to
26 shock the conscience, including but not limited to, unwarranted state interference in
27 Plaintiffs' familial relationship with her son, DECEDENT.

1 46. DECEDENT had a cognizable interest under the Due Process Clause of
2 the Fourteenth Amendment of the United States Constitution to be free from state
3 actions that deprive him of his right to life, liberty, or property in such a manner as to
4 shock the conscience.

5 47. As a result of the excessive force by Defendant DOES 1-5 and failure of
6 Defendant DOES 1-5 to intervene, DECEDENT died. Plaintiffs R.S. and PAMELA
7 AMICI were thereby deprived of their constitutional right of familial relationship
8 with DECEDENT. The involved officers interfered with the familial relationship
9 between the Plaintiffs and DECEDENT.

10 48. Defendants DOES 1-5, acting under color of state law, thus violated the
11 Fourteenth Amendment rights of R.S. and PAMELA AMICI to be free from
12 unwarranted interference with their familial relationship with DECEDENT.

13 49. The aforementioned actions of Defendants DOES 1-5, along with other
14 undiscovered conduct, shock the conscience, in that deliberation was practical and
15 they acted with deliberate indifference to the constitutional rights of DECEDENT
16 and Plaintiffs R.S., and PAMELA AMICI, and with purpose to harm unrelated to any
17 legitimate law enforcement objective.

18 50. Defendants DOES 1-5, acting under color of state law, thus violated the
19 Fourteenth Amendment rights of DECEDENT and Plaintiffs.

20 51. As a direct and proximate cause of the acts of Defendants DOES 1-5, the
21 DECEDENT experienced severe pain and suffering and lost his life and earning
22 capacity. Plaintiffs suffered extreme and severe mental anguish and pain and have
23 been injured in mind and body. Plaintiffs have also been deprived of the life-long
24 love, companionship, comfort, support, society, care and sustenance of DECEDENT,
25 and will continue to be so deprived for the remainder of their natural lives. Plaintiffs
26 are also claiming funeral and burial expenses and a loss of financial support.

52. As a result of the conduct of Defendants DOES 1-5, are liable for DECEDENT's injuries, either because they were integral participants in the denial of due process, or because they failed to intervene to prevent these violations.

53. The conduct of Defendants DOES 1-5 was willful, wanton, malicious, and done with reckless disregard for the rights and safety of DECEDENT and Plaintiffs and therefore warrants the imposition of exemplary and punitive damages as to Defendants DOES 1-5.

54. R.S. brings this claim individually and as successor-in-interest to DECEDENT, and seeks both survival and wrongful death damages under federal law. PAMELA AMICI brings this claim in her individual capacity for wrongful death damages under federal law. Plaintiffs also seek attorney fees under this claim.

FOURTH CLAIM FOR RELIEF

Municipal Liability for Unconstitutional Custom or Policy (42 U.S.C. § 1983)

(Against Defendants DOES 6-10 and CITY)

55. Plaintiffs repeat and reallege each and every allegation in paragraphs 1 through 54 of this Complaint with the same force and effect as if fully set forth herein.

56. On and for some time prior to December 12, 2010, (and continuing to the present date) Defendants DOES 6-10 and CITY, deprived Plaintiffs and DECEDENT of the rights and liberties secured to them by the Fourth and Fourteenth Amendments to the United States Constitution, in that said defendants and their supervising and managerial employees, agents, and representatives, acting with gross negligence and with reckless and deliberate indifference to the rights and liberties of the public in general, and of Plaintiffs and DECEDENT, and of persons in their class, situation and comparable position in particular, knowingly maintained, enforced and applied an official recognized custom, policy, and practice of:

- (a) Employing and retaining as CITY Police Officers and other personnel, including Defendants DOES 1-5, who Defendants DOES 6-10 and CITY, at all times material herein knew or reasonably should have known had dangerous propensities for abusing their authority and for mistreating citizens by failing to follow written CITY Police Department policies;
- (b) Of inadequately supervising, training, controlling, assigning, and disciplining CITY Police Officers, and other personnel, including Defendants DOES 1-5, who Defendants DOES 6-10 and CITY knew or in the exercise of reasonable care should have known had the aforementioned propensities and character traits;
- (c) By maintaining grossly inadequate procedures for reporting, supervising, investigating, reviewing, disciplining and controlling the intentional misconduct by Defendants DOES 1-5, who are Police Officers of CITY;
- (d) By failing to adequately train officers, including Defendants DOES 1-5, and failing to institute appropriate policies, regarding constitutional procedures and practices for traffic stops and shooting at vehicles;
- (e) By ratifying the intentional misconduct of Defendants DOES 1-5, who are Police Officers of CITY;
- (f) By failing to discipline CITY Police Officers conduct, including but not limited to, of unlawful detention and excessive force;
- (g) By failing to properly investigate claims of unlawful detention and excessive force by CITY Police Officers;
- (h) By conspiring to give a false account of the incident to attempt to justify the use of deadly force; and

1 (i) By having and maintaining an unconstitutional policy, custom,
2 and practice of detaining and arresting individuals without
3 probable cause or reasonable suspicion, and using excessive force,
4 including deadly force, which also is demonstrated by inadequate
5 training regarding these subjects. The policies, customs, and
6 practices of DOES 6-10 and CITY, were done with a deliberate
7 indifference to individuals' safety and rights.
8

9 57. By reason of the aforementioned policies and practices of Defendants
10 DOES 6-10 and CITY, DECEDENT was severely injured and subjected to pain and
11 suffering and lost his life.

12 58. Defendants DOES 6-10, together with various other officials, whether
13 named or unnamed, had either actual or constructive knowledge of the deficient
14 policies, practices and customs alleged in the paragraphs above. Despite having
15 knowledge as stated above these defendants condoned, tolerated and through actions
16 and inactions thereby ratified such policies. Said defendants also acted with
17 deliberate indifference to the foreseeable effects and consequences of these policies
18 with respect to the constitutional rights of DECEDENT, Plaintiffs, and other
19 individuals similarly situated.

20 59. By perpetrating, sanctioning, tolerating and ratifying the outrageous
21 conduct and other wrongful acts, Defendants DOES 6-10, acted with an intentional,
22 reckless, and callous disregard for the life of DECEDENT, and DECEDENT's and
23 Plaintiffs' constitutional rights. Defendants DOES 6-10, each of their actions were
24 willful, wanton, oppressive, malicious, fraudulent, and extremely offensive and
25 unconscionable to any person of normal sensibilities.

26 60. Furthermore, the policies, practices, and customs implemented and
27 maintained and still tolerated by Defendants DOES 6-10, were affirmatively linked to
28

1 and were a significantly influential force behind the injuries of DECEDENT and
2 Plaintiffs.

3 61. By reason of the aforementioned acts and omissions of Defendants
4 DOES 6-10, Plaintiffs were caused to incur funeral and related burial expenses, and
5 loss of financial support.

6 62. By reason of the aforementioned acts and omissions of Defendants
7 DOES 6-10, Plaintiffs have suffered loss of love, companionship, affection, comfort,
8 care, society, and future support.

9 63. Accordingly, Defendants DOES 6-10, each are liable to Plaintiffs for
10 compensatory damages under 42 U.S.C. § 1983.

11 64. Plaintiffs seek both wrongful death and survival damages under this
12 claim. R.S. brings this claim individually and as successor-in-interest to
13 DECEDENT, and seeks both survival and wrongful death damages under federal
14 law. PAMELA AMICI brings this claim in her individual capacity for wrongful
15 death damages under federal law. Plaintiffs also seeks attorney fees under this claim.

17 **FIFTH CLAIM FOR RELIEF**

18 **False Arrest/False Imprisonment**

19 (Against Defendants DOES 1-5 and CITY)

20 65. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
21 through 64 of this Complaint with the same force and effect as if fully set forth
22 herein.

23 66. Defendants DOES 1-5, while working as Police Officers for the CITY
24 Police Department, and acting within the course and scope of their duties,
25 intentionally deprived DECEDENT of his freedom of movement by use of force,
26 threats of force, menace, fraud, deceit, and unreasonable duress. Defendants DOES
27 1-5 also detained DECEDENT without reasonable suspicion. The involved officers
28 also arrested the DECEDENT without probable cause.

1 67. DECEDENT did not knowingly or voluntarily consent.

2 68. The conduct of Defendants DOES 1-5 was a substantial factor in causing
3 the harm of DECEDENT.

4 69. CITY is vicariously liable for the wrongful acts of Defendants DOES 1-
5 5, pursuant to section 815.2(a) of the California Government Code, which provides
6 that a public entity is liable for the injuries caused by its employees within the scope
7 of the employment if the employee's act would subject him or her to liability.

8 70. The conduct of Defendants DOES 1-5 was malicious, wanton,
9 oppressive, and accomplished with a conscious disregard for the rights of
10 DECEDENT, entitling Plaintiffs to an award of exemplary and punitive damages.

11 71. Plaintiff R.S. brings this claim individually and as successor-in-interest
12 to DECEDENT, and seeks both survival and wrongful death damages under state
13 law.

14
15 **SIXTH CLAIM FOR RELIEF**

16 **Battery (Cal. Govt. Code § 820 and California Common Law)**

17 (Wrongful Death)

18 (Against Defendant DOES 1-5 and CITY)

19 72. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
20 through 71 of this Complaint with the same force and effect as if fully set forth
21 herein.

22 73. Defendant DOES 1-5, while working as a Police Officer for the CITY
23 Police Department, and acting within the course and scope of their duties,
24 intentionally shot DECEDENT. The shooting was a use of unreasonable force
25 against the DECEDENT which the DECEDENT did not consent to. As a result of
26 the actions of Defendant DOES 1-5, DECEDENT suffered severe pain and suffering
27 and ultimately died from his injuries and lost earning capacity. DOES 1-5 had no
28

1 legal justification for using force against DECEDENT and said Defendants' use of
2 force while carrying out their police duties was an unreasonable use of force.

3 74. As a direct and proximate result of Defendants' conduct as alleged
4 above, Plaintiff suffered extreme and severe mental anguish and pain and has been
5 injured in mind and body. Plaintiff also has been deprived of the life-long love,
6 companionship, comfort, support, society, care and sustenance of DECEDENT, and
7 will continue to be so deprived for the remainder of his natural life. CITY is
8 vicariously liable for the wrongful acts of Defendant DOES 1-5 pursuant to section
9 815.2(a) of the California Government Code, which provides that a public entity is
10 liable for the injuries caused by its employees within the scope of the employment if
11 the employee's act would subject him or her to liability.

12 75. The conduct of Defendant DOES 1-5 was malicious, wanton,
13 oppressive, and accomplished with a conscious disregard for the rights of Plaintiff
14 and DECEDENT, entitling Plaintiff, individually and as successor-in-interest to
15 DECEDENT, to an award of exemplary and punitive damages.

16 76. Plaintiff R.S. brings this claim individually and as successor-in-interest
17 to DECEDENT, and seeks both survival and wrongful death damages under state
18 law.

20 **SEVENTH CLAIM FOR RELIEF**

21 **Negligence (Cal. Govt. Code § 820 and California Common Law)**

22 (Wrongful Death)

23 (Against All Defendants)

24 77. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
25 through 77 of this Complaint with the same force and effect as if fully set forth
26 herein.

27 78. The actions and inactions of the Defendants were negligent and reckless,
28 including but not limited to:

- 1 (a) the failure to properly and adequately assess the need to detain,
- 2 arrest, and use force or deadly force against DECEDENT;
- 3 (b) the negligent tactics and handling of the situation with
- 4 DECEDENT;
- 5 (c) the negligent detention, arrest, tactics in conducting an
- 6 investigation into a report of a person with a weapon, and
- 7 negligent use of force, including deadly force, against
- 8 DECEDENT;
- 9 (d) the failure to provide prompt medical care to DECEDENT;
- 10 (e) the failure to properly train and supervise employees, both
- 11 professional and non-professional, including Defendants DOES 1-
- 12 5;
- 13 (f) the failure to ensure that adequate numbers of employees with
- 14 appropriate education and training were available to meet the
- 15 needs of and protect the rights of DECEDENT;
- 16 (g) the negligent handling of evidence and witnesses.

17 79. As a direct and proximate result of defendants' conduct as alleged
 18 above, and other undiscovered negligent conduct, DECEDENT was caused to suffer
 19 severe pain and suffering and ultimately died and lost earning capacity. Also as a
 20 direct and proximate result of defendants' conduct as alleged above, Plaintiff suffered
 21 extreme and severe mental anguish and pain and have been injured in mind and body.
 22 Plaintiff also has been deprived of the life-long love, companionship, comfort,
 23 support, society, care and sustenance of DECEDENT, and will continue to be so
 24 deprived for the remainder of his natural lives.

25 80. CITY is vicariously liable for the wrongful acts of Defendants DOES 1-
 26 5 and DOES 6-10 pursuant to section 815.2(a) of the California Government Code,
 27 which provides that a public entity is liable for the injuries caused by its employees
 28

1 within the scope of the employment if the employee's act would subject him or her to
2 liability.

3 81. The conduct of Defendants DOES 1-10 was malicious, wanton,
4 oppressive, and accomplished with a conscious disregard for the rights of Plaintiff
5 and DECEDENT, entitling Plaintiff to an award of exemplary and punitive damages.

6 82. Plaintiff R.S. brings this claim individually and as successor-in-interest
7 to DECEDENT, and seeks both survival and wrongful death damages under state
8 law.

9 10 **EIGHTH CLAIM FOR RELIEF**

11 **Violation of Bane Act (Cal. Civil Code § 51.7 and California Common Law)**

12 (Against All Defendants)

13 83. Plaintiffs repeat and reallege each and every allegation in paragraphs 1
14 through 82 of this Complaint with the same force and effect as if fully set forth
15 herein.

16 84. Defendants DOES 1-5, while working as Police Officers for the CITY
17 Police Department, and acting within the course and scope of their duties, interfered
18 with or attempted to interfere with the rights of DECEDENT to be free from
19 unreasonable searches and seizures, and to be free from state actions that shock the
20 conscience, by threatening or committing acts involving violence, threats, coercion,
21 or intimidation.

22 85. DECEDENT reasonably believed that if he exercised his constitutional
23 rights, Defendants DOES 1-5 would commit acts involving violence, threats,
24 coercion, or intimidation against them or their property.

25 86. Defendants DOES 1-5 injured DECEDENT to prevent DECEDENT
26 from exercising his rights or retaliated against DECEDENT for having exercised his
27 rights.

1 87. DECEDENT was caused to suffer severe pain and suffering and
2 ultimately died. R.S. suffered severe mental anguish and pain and has been injured in
3 mind and body. R.S. has been deprived of the life-long comfort, support, society,
4 care and sustenance of DECEDENT, and will continue to be so deprived for the
5 remainder of his natural lives.

6 88. The conduct of Defendants DOES 1-5 was a substantial factor in causing
7 the harms, losses, injuries, and damages of DECEDENT and R.S.

8 89. CITY is vicariously liable for the wrongful acts of Defendants DOES 1-
9 5 pursuant to section 815.2(a) of the California Government Code, which provides
10 that a public entity is liable for the injuries caused by its employees within the scope
11 of the employment if the employee's act would subject him or her to liability.

12 90. The conduct of Defendants DOES 1-5 was malicious, wanton,
13 oppressive, and accomplished with a conscious disregard for the rights of
14 DECEDENT, entitling Plaintiff to an award of exemplary and punitive damages.

15 91. Plaintiff R.S. brings this claim individually and as successor-in-interest
16 to DECEDENT, and seeks both survival and wrongful death damages under state
17 law. Plaintiffs also seek attorney fees under this claim.

18 ///

19 ///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request entry of judgment in their favor and against Defendants City of Long Beach, and Does 1-10, inclusive, as follows:

- A. For compensatory damages, including both survival damages and wrongful death damages under federal and state law, in the amount to be proven at trial;
- B. For funeral and burial expenses, and loss of financial support;
- C. For punitive damages against the individual defendants in an amount to be proven at trial;
- D. For interest;
- E. For reasonable costs of this suit and attorneys' fees; and
- F. For such further other relief as the Court may deem just, proper, and appropriate.

DATED: April 4, 2011

LAW OFFICES OF DALE K. GALIPO

By

Dale K. Galipo
Dale K. Galipo
Attorneys for Plaintiffs

DATED: April 7, 2011

THE CLAYPOOL LAW FIRM

By

Brian Claypool
Brian E. Claypool
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

DATED: April 4, 2011

LAW OFFICES OF DALE K. GALIPO

By Dale K. Galipo
Dale K. Galipo
Attorneys for Plaintiffs

DATED: April 7, 2011

THE CLAYPOOL LAW FIRM

By Brian E. Claypool
Brian E. Claypool
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETI (c) PLAINTIFFS (Check box if you are representing yourself ☐)

Minor R.S. and PAMELA AMICI

DEFENDANTS

CITY OF LONG BEACH and DOES 1-10, inclusive

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Dale K. Galipo (SBN: 144074)

LAW OFFICES OF DALE K. GALIPO

21800 Burbank Boulevard - Suite 310

Woodland Hills, California 91367

Telephone: (818) 347-3333 / Facsimile: (818) 347-4118

Attorneys (If Known)

BASIS OF JURISDICTION (Place an X in one box only.)

☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

Citizen of This State

PTF DEF

☒ 1 ☐ 1

Incorporated or Principal Place of Business in this State

PTF DEF

☐ 4 ☒ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business in Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

V. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate JudgeREQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

MONEY DEMANDED IN COMPLAINT: \$

I. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

2 U.S.C § 1983

II. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA(1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

SACV11-00536

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

III(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

yes, list case number(s): _____

III(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or

☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IV. VENUE: (When completing the following information, use an additional sheet if necessary.)

☐ List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Minor R.S.: County of Mendocino PAMELA AMICI: County of Orange

☐ List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
CITY OF LONG BEACH: County of Los Angeles	

☐ List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
City of Long Beach, County of Los Angeles	

Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

SIGNATURE OF ATTORNEY:

Dale K. Galipo
Dale K. Galipo

Date April 7, 2011

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

by to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Andrew Guilford and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV11- 536 AG (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT

for the
CENTRAL DISTRICT OF CALIFORNIA

R.S., a minor by and through his Guardian ad Litem
STEPHANIE SENTELL, and PAMELA AMICI,

Plaintiffs

v.

CITY OF LONG BEACH, and DOES 1-10, inclusive,

Defendants

Civil Action No.

FOR OFFICE USE ONLY
11-00536 AG (RNBx)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

CITY OF LONG BEACH
333 West Ocean Boulevard
Long Beach, California 90802

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

LAW OFFICES OF DALE K. GALIPO
Dale K. Galipo, Esq. (CA SBN: 144074)
21800 Burbank Boulevard, Suite 310
Woodland Hills, CA 91367
Telephone: (818) 347-3333 / Facsimile: (818) 347-4118
Email: dalekgalipo@yahoo.com / dgalipo@galipolaw.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

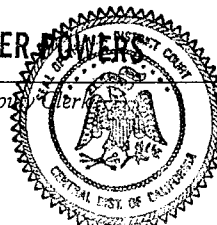
CLERK OF COURT

APR 12 2011

Date: _____

FOR OFFICE USE ONLY

Signature of Clerk or Deputy Clerk



1181